

**TCEQ DOCKET NO. 2015-0663-MWD**

|                                 |          |                              |
|---------------------------------|----------|------------------------------|
| <b>APPLICATION BY NASH FM</b>   | <b>§</b> | <b>BEFORE THE</b>            |
| <b>529, LLC FOR A NEW TPDES</b> | <b>§</b> | <b>TEXAS COMMISSION ON</b>   |
| <b>PERMIT NO. WQ0015264001</b>  | <b>§</b> | <b>ENVIRONMENTAL QUALITY</b> |
|                                 | <b>§</b> |                              |

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**REPLY OF CHRIS AND DONNISHA SPICER TO RESPONSES TO  
HEARING REQUESTS**

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**I. SUMMARY**

Chris and Donnisha Spicer (the “Spicers”) agree with the recommendations of the TCEQ Office of the Public Interest Counsel (“OPIC”) and Executive Director (“ED”) that the Commission grant the Spicer’s hearing request. With regard to the Spicer’s affected person status, these responses properly recognize the manner in which the Spicer’s will be potentially impacted by Nash FM 529’s (“Nash”) proposed construction and operation of a new wastewater treatment plant, and the associated discharge.

But, the Spicer’s disagree with Nash’s contention in its response that the Spicer’s are not affected persons. Furthermore, the hearing should be referred for an expected duration of nine months considering the multiple issues involved, and considering the conduct of simultaneous contested case hearings on two wastewater permit applications wherein the Spicer’s are a party.

**II. THE COMMISSION SHOULD GRANT THE SPICERS’ HEARING  
REQUESTS**

*A. The Spicer’s are “affected persons”.*

Nash objects to the Spicer's affected person status based upon the proximity of Mr. Spicer's property to the Northwest of the proposed treatment plant, which places the property upstream of the authorized discharge into Mayde Creek.

Even though the Spicer's property is located upstream of the treatment plant under normal conditions, the potential remains for the plant to adversely impact the Spicer's property. During periods of high precipitation, Mayde Creek floods the Mayde Creek Estates Neighborhood where the Spicers live.



**Figure 1**

**Flooding of Mayde Creek Estates during 2009 Flood Event**

During these flood events, water does not flow in a uniform direction. Instead, it will tend to pool in the area. During these periods, effluent from the treatment plant could flow onto the Spicer's property. If the treatment plant experiences an upset under such circumstances, or if the treatment plant is flooded under such circumstances, there is a significant potential for the Spicers property to be contaminated.

By seeking to protect their property from impacts during flood events, the Spicers are asserting an interest protected by the law under which the application is being considered. At 30 TAC § 309.13(a), TCEQ rules prohibit the siting of a wastewater treatment plant within the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event. The Spicers contend that the draft permit does not contain adequate provisions to ensure that this level of protection is provided.

Additionally, the Spicers own and utilize a groundwater well, and have expressed concern that the installation and operation of the treatment plant will adversely impact their ability to continue use of that well. Again, TCEQ Rules provide that a wastewater treatment plant may not be permitted unless the site minimizes the possible contamination of surface water and groundwater.<sup>1</sup> In this way, this concern also is related to an interest protected by the law under which the application is to be considered, and the proximity of the Spicers' property to

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<sup>1</sup> 30 TAC § 309.12.



the proposed facility makes their interest in the protection of their own groundwater distinct from the interests of the general public.

Furthermore, the close proximity of the Spicers' property and residence to the wastewater treatment plant places them at a heightened risk of exposure to foul odors.

*B. Issues consistent with those identified by the Executive Director and Office of Public Interest Counsel should be referred to SOAH.*

With regard to the issues appropriate for referral to SOAH, the Applicant asks that the Commission treat the Executive Director's preliminary decision as if it is the final word on several issues. Consistent with the analysis provided by the Executive Director and Office of Public Interest Counsel, disputed questions of fact exist with regard to the issues that have been raised, and a contested case hearing is the appropriate means by which to resolve those disputes.

*C. The Hearing should be nine months in duration.*

The hearing in this matter will involve several different issues, including downstream surface water impacts, site flooding concerns, regionalization concerns, and groundwater contamination concerns. Each of these issues raises fact issues that do not altogether overlap. Also, the Spicers recently submitted a hearing request with regard to the application of Pulte Homes for another nearby wastewater treatment plant discharge. That matter was referred for a period of nine months.<sup>2</sup> Moving forward, the Spicers will now need to balance

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<sup>2</sup> TCEQ Docket No. 2015-0035-MWD.

simultaneous participation in two separate contested case hearings. The same is true for the Domahadi's, who have also requested a hearing. Considering that several issues are presented in this case, and in consideration of the cumulative burden on the protestants of addressing multiple applications at the same time, it is appropriate to set a hearing duration in this matter of nine months, consistent with OPIC's recommendation.

### III. PRAYER

For the reasons stated above, the Spicers' respectfully ask that the Commission grant their hearing request and refer the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing of an anticipated maximum duration of nine months.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

I, Eric Allmon, hereby certify that on June 22, 2015, the foregoing document was electronically filed with the Chief Clerk at the Texas Commission of Environmental Quality in accordance with TCEQ rules and the instructions as set forth by the Chief Clerk on the Commission's website, and that copies were served on all parties listed below via hand delivery, facsimile transmission, or by deposit in the United States Mail.

  
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